

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA

v.

CARL GODFREY

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CASE NO. 4:04CR116

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on November 3, 2008 to determine whether the Defendant violated his supervised release. The Defendant was represented by Denise Benson. The Government was represented by Heather Rattan.

On March 29, 2005, the Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to 71 months and one day imprisonment, followed by a 4-year term of supervised release for the offense of Conspiracy to Manufacture, Distribute or Possess w/Intent to Manufacture, Distribute or Dispense Cocaine Base (Crack). On June 27, 2008, Defendant was released from custody and ordered to commence service of a 4-year term of supervised release.

On October 8, 2008, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (Dkt. 570). The petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall refrain from any unlawful use of a controlled substance, and Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court; (2) Defendant shall

refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any controlled substance or any paraphernalia related to any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; (3) Defendant shall not associate with any person engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer; (4) Defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer; and (5) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as Defendant is released from the program by the probation officer.

The petition alleges that Defendant committed the following violations: (1) Defendant admitted verbally and in writing to Senior U.S. Probation Officer Linda Werner that he used marijuana on July 4, 10, August 21, 26, September 3, 16, and 26, 2008; (2) Defendant submitted urine specimens at Sharp Focus, Denton, Texas, on July 23, 29, August 12, 21, 26, September 3, 16, and 25, 2008, which tested positive for marijuana; (3) Kroll Laboratory Toxicology interpretation report indicates that Defendant reused marijuana prior to July 23, 29, August 12, 21, 26, September 3 and 16, 2008; (4) Defendant submitted a urine specimen on September 16, 2008, which tested positive for cocaine, and Defendant admitted verbally and in writing that he used said substance; (5) on August 24, 2008, Defendant reportedly was riding in a vehicle with Patrick Hicks, which was stopped by Denton Police Department, Mr. Hicks was taken into custody for Possession of a Controlled Substance in a Drug Free Zone and Tamper/Fabricate Physical Evidence with Intent to Impair, and Defendant reported he was fully aware that Mr. Hicks was convicted felon and was known to deal drugs; (6) Defendant failed to notify the U.S. Probation Office within 72 hours of


being questioned by law enforcement on August 24, 2008; and (7) Defendant failed to submit to a drug test at Sharp Focus Counseling, Denton, Texas, on August 4, 2008.

Prior to the Government putting on its case, the Defendant entered a plea of true to the alleged violations. At the hearing, the Court recommended that Defendant's supervised release be revoked based on those violations. Defendant waived his right to allocution before a district judge.

RECOMMENDATION

Having heard the argument of counsel, the Court recommends that the District Court revoke the Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of sixteen (16) months, with no supervised release to follow. The Court further recommends that Defendant carry out his term of imprisonment at the appropriate Bureau of Prisons facility closest to either Fort Worth or Texarkana.

SIGNED this 4 day of Nov, 2008.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE